


Michigan Department of Community Health



**Health Policy, Regulation and Professions Administration
Bureau of Health Systems**

**Nursing Home Transactions and Bureau of Health System
Responsibilities**

House Health Policy and Senior Health Security, and Retirement Committees
December 6th, 2007

State Change of Ownership Policy

- The transaction results in a change in "person" as the legal holder of the Certificate of Need for the particular licensed health facility or covered clinical service; or
- The transaction results in the issuance of a new license for a licensed health facility to change the licensee; or
- The removal, addition, or substitution of a partner in a partnership; or
- The transfer of title and property to another person in an unincorporated sole proprietorship; or
- The merger of a corporation into another corporation, or the consolidation of two or more corporations, resulting in a new corporation.

Federal Change of Ownership Policy

Sec. 489.18 Change of ownership or leasing: Effect on provider agreement.

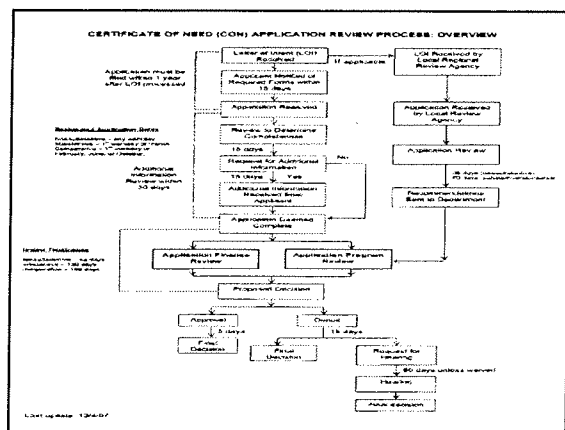
(a) What constitutes change of ownership—

- (1) Partnership. In the case of a partnership, the removal, addition, or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable State law, constitutes change of ownership.
- (2) Unincorporated sole proprietorship. Transfer of title and property to another party constitutes change of ownership.
- (3) Corporation. The merger of the provider corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation constitutes change of ownership. Transfer of corporate stock or the merger of another corporation into the provider corporation does not constitute change of ownership.
- (4) Leasing. The lease of all or part of a provider facility constitutes change of ownership of the leased portion.

What is Certificate of Need?

Under Part 222 of the Public Health Code, Certificate of Need is designed to promote and assure all of the following:

- The availability and accessibility of quality health services at a reasonable cost;
- Within a reasonable geographic proximity for all people in this state; and
- Allowing for appropriate differential consideration of the health care needs of residents in rural counties in ways that do not compromise the quality and affordability of health care services for those residents.



When is a Certificate of Need Required?

MCL 333.22209(1) requires CON review and approval to:

- Acquire an existing health facility or begin operation of a health facility at a site that is not currently licensed for that type (nursing home, hospital, surgery center)
- Make a change in the bed capacity of a health facility
- Initiate, replace, or expand a covered clinical service
- Make a covered capital expenditure - Projects include construction and renovation for a clinical area in a licensed health facility that exceed \$2,872,500 as of January 2008 (MCL 333.22203)

What does Certificate of Need cover?

- Air ambulances (helicopters)
- Cardiac catheterizations
- Computed tomography (CT) scanners
- Hospital beds – acute care
- Magnetic resonance imaging (MRI)
- Megavoltage radiation therapy (MRT)
- Neonatal intensive care units (NICU)
- **NURSING HOME/HLTC UNIT BEDS**
- Open heart surgery
- Positron emission tomography (PET)
- Psychiatric beds - acute inpatient
- Surgical services - hospital and freestanding facilities
- Transplant services – bone marrow, heart-lung-liver, pancreas
- Urinary lithotrippers (UESWL)

CON Requirements

MCL 333.22225 – Program Review. This review includes:

- 1) Demonstration of need
- 2) Assurance that proposed project will be delivered in compliance with applicable operating standards
- 3) Verification that nonprofit health facility governing bodies have a majority consumer membership as well as represent the population served.

MCL 333.22225(2) – Finance Review. This review includes verifying:

- 1) Capital costs will result in the least costly annual operating costs.
- 2) Funds are available to meet capital and operating needs.
- 3) Project utilizes least costly method of financing.
- 4) Projects with construction stipulate to competitively bid the capital expenditures.

License Application Requirements Summarized

Section 20142

- (1) Application form provided by department – including attachments, data, supplements, as required.
- (2) An applicant must certify accuracy of information.
- (3) Disclosures (all health facilities)
 - (a) Name, addresses, principal occupations, positions of all persons with "ownership" interest.
 - (b) Name of lessor if leased real estate; financial interest applicant has in real estate.
 - (c) CHOW 15 days before change occurs, except stock purchase.
 - (d) Written, advance notice to department of proposed sale.
 - (e) Applicant, parties must obtain from department information on areas of non-compliance that must be corrected.
 - (f) Department to notify of non-compliance, before CHOW, require correction as condition of issuance of license.
- (4) Disclosure (nursing homes only)
 - Names of suppliers of goods, services which exceed \$5000/12 months.
 - Names, addresses, principal occupations, positions of all who have ownership interest in business furnishing goods or services, if:
 - (a) The person, spouse, parent, sibling, child has ownership interest in nursing homes, and
 - (b) The charges for goods and services exceeds \$5000/12 months.

License Application Requirements Summarized (cont.)

License (Application) Requirements

Sec. 20152

- (1) Certify:
 - (a) All phases of operation comply with state and federal laws prohibiting discrimination.
 - (b) Selection and appointment of physicians is without discrimination on basis of licensure or registration, doctors of medicine/osteopathic medicine.

Sec. 21755 – Grounds for Refusal to issue license if:

- (a) Applicant's occupational, professional, or health agency license revoked in five years preceding date of application.
- (b) Not suitable to operate because of:
 - (1) Financial incapacity.
 - (2) Lack of good moral character, as defined in MCL 338.41 - MCL 338.47.
 - (3) Lack of appropriate business or professional experience.

GOOD MORAL CHARACTER DEFINITION

338.41 "Good moral character" and "principal department" defined.

Sec 1.

- (1) The phrase "good moral character", or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.
- (2) As used in this act, "principal department" means the department which has jurisdiction over the board or agency issuing the license.

GOOD MORAL CHARACTER DEFINITION (cont.)

338.42 Judgment of guilt in criminal prosecution or judgment in civil action as evidence in determining good moral character; notice; rebuttal.

Sec 2.

A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed.

3100. LEGAL REQUIREMENTS RELATING TO COMPLAINTS

3110. Michigan Public Health Code (Public Act 368 of 1978, as amended)

Section 21723.

- (1) A nursing home shall post in an area accessible to residents, employees, and visitors the name, title, location, and telephone number of the individual in the nursing home who is responsible for receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.
- (2) An individual responsible for receiving complaints and conducting complaint investigations in a nursing home shall be on duty and on site not less than 24 hours per day, 7 days a week.
- (3) The individual described in subsection (2) who receives a complaint, inquiry, or request from a nursing home resident or the resident's surrogate decision maker shall respond using the nursing home's established procedures pursuant to R 325.20113 of the Michigan administrative code.

**STATE REQUIREMENTS
Abuse Reporting**

- ▶ **ANY EMPLOYEE WHO BECOMES AWARE OF "ABUSE" HAS RESPONSIBILITY TO REPORT TO ADMINISTRATOR OR NURSING DIRECTOR**
- ▶ **ANY PERSON MAY REPORT "ABUSE" TO DEPARTMENT**
- ▶ **IF CHAIN OF COMMAND REPORT IS REQUIRED WITHIN FACILITY – ENSURE ADMINISTRATOR OR DIRECTOR OF NURSING ARE ADVISED**
- ▶ **STATE REPORTING REQUIREMENTS BASED ON ACTUAL ABUSE**
- ▶ **"IMMEDIATELY" MEANS AS SOON AS POSSIBLE NOT MORE THAN 24 HOURS AFTER INCIDENT; SEE ALSO STATE COMPLAINT MANUAL, SECTION 5323**

**Federal Abuse Reporting Requirements
42 CFR 483.13 (c)(2)(3)(4)
Resident Behavior and Facility Practices
F 225**

- (2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with state law (emphasis added) through established procedures (including the State survey and certification agency).

(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or their designated representative and to other officials in accordance with State law (including to the State Survey and Certification Agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

What is Reportable

- Willful injury, verbal, sexual, physical or mental abuse.
- Involuntary seclusion or unreasonable confinement, intimidation or punishment.
- Mistreatment.
- Injury of an unknown source.
- Neglect, the failure to provide goods or services.
- Misappropriation of a resident's property of any value.

These are reportable at any severity, any level of harm.

HOW TO REPORT ALLEGED ABUSE

- ▶ **Report alleged abuse to DCH/Complaint hotline @ 1-800-882-6006**
- ▶ **Typed follow-up report on alleged abuse by email, mail or fax using one of the following methods:**

**FACILITY INCIDENT REPORT- 24 HOURS
(BHS-OPS-362) FORM**

**ONLINE SUBMISSION OF BHS-OPS-362
@ www.michigan.gov/bhs**

**FACILITY FORM WITH NECESSARY
INFORMATION**

Unannounced Survey Requirements

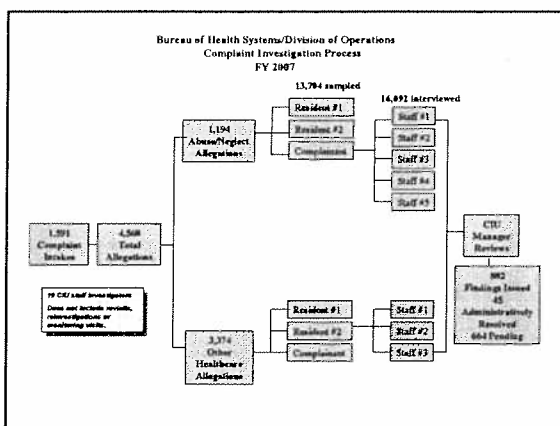
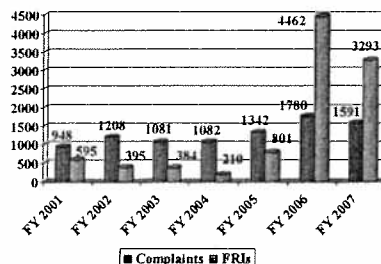
Sec. 20155(1) states "A visit made pursuant to a complaint shall be unannounced."

SOM, App. P. "Do not announce SNF/NF surveys to the facility."

SOM 2700. "It is CMS policy to have unannounced surveys for all providers...." "While the unannounced surveys may result in some minor inconveniences, this policy represents changing public attitudes and expectations toward compliance surveys."

Sec. 20155(9) "The department of consumer and industry services or a local health department shall conduct investigations or inspections, other than inspections of financial records, of a county medical care facility, home for the aged, nursing home, or hospice residence without prior notice to the health facility or agency."

Complaint vs. FRI Intake History



Long Term Care Survey Process

Task 1: Offsite Preparation

A. General Objective

- To analyze various sources of information that are available about the facility in order to:
 - 1) Identify & pre-select concerns for Phase I of the survey
 - 2) Pre-select potential residents for Phase I of the survey

Offsite Survey Prep (cont'd)

B. Information Sources

- 3 Quality Indicator Reports from the Standard Analytic Reporting System of the CMS National Resident Assessment Data Base – used as indicators of potential problems or concerns:
 - 1) Facility Characteristics
 - 2) Facility Quality Indicator Profile
 - 3) Resident Level Summary

Task 1
Information Sources (cont'd)

- Review of the Statement of Deficiencies (2567) from the previous survey
- Review of the OSCAR Report 3 – History Facility Profile and OSCAR Report 4 – Full Facility Profile
- Results of Complaint Investigations
- Information about Waivers or Variances

Task 1
Information Sources (cont'd)

- Information from the State Ombudsman's Office
- Preadmission Screening and Resident Review Reports (PASRR)
- Other Pertinent Information

Task 1 (cont)

- Choose concerns to be investigated from the Facility Quality Measure/Indicator Report:

Any sentinel health event that is flagged (fecal impaction, dehydration, low-risk for pressure ulcers)

Any other QM/QI that is flagged at the 90th percentile

Any unflagged QM/QI in which the facility is at the 75th percentile or greater.

Task 2
Entrance Conference

- Meet the administrator or designee
- Explain reason for survey
- Explain the survey process
- Request information/documents
- Ask with whom to discuss concerns

Task 3
Initial Tour

- The initial tour is to gather information about the concerns that have been preselected
- Provides an initial review of the facility, the residents and the staff
- Confirms or invalidates the preselected concerns and add concerns discovered on the tour

Task 4
Sample Selection

- Phase 1 sample is pre-selected during Task 1 (Offsite Preparation) and then reviewed and retained unless they are discharged or the survey team has another reason to substitute, e.g., to select interviewable residents or add a concern gleaned from the tour
- The Phase 2 sample is selected onsite, part way through the survey to represent new concerns and/or to continue further investigation of Phase 1 concerns
- It is statutorily required that both phases of the sample be case-mix stratified in order to capture both interviewable and non-interviewable residents as well as residents from both heavy and light care categories

Task 5 Information Gathering

- Task 5 includes the following 7 sub-tasks:
 - 5A: General Observations of the Facility
 - 5B: Kitchen/Food Service Observations
 - 5C: Resident Review (per observation interview and record review)
 - 5D: Quality of Life Assessment (individual interview, a group interview, family interviews, and observations of non-interviewable residents)

Survey Sub-Tasks (cont)

- 5E: Medication Pass and Pharmacy Services
- 5F: Quality Assessment and Assurance Review (review of the facility's program of identifying and addressing specific care and quality issues)
- 5G: Abuse Prohibition Review

Task 6 Information Analysis for Deficiency Determination

- The survey team meets to review and analyze all information collected and to determine whether or not the facility has failed to meet one or more of the regulatory requirements and
- To determine whether to conduct an extended survey (sub-standard quality of care)

Task 7 Exit Conference

- The general objective of the exit conference is to inform the facility of the survey team's observations and preliminary findings

Immediate Jeopardy to Resident Health or Safety

Actual Harm that is not Immediate Jeopardy

No Actual Harm with Potential for More than Minimal Harm that is not Immediate Jeopardy

No Actual Harm with Potential for Minimal Harm

	J	K	L
	G	H	I
	D	E	F
	A	B	C
	ISOLATED	PATTERN	WIDESPREAD

■ Substandard Quality of Care:
any deficiency in S483.13, Resident Behavior and Facility Practices,
S483.15, Quality of Life, or
S483.25, Quality of Care that constitutes:
→ Immediate Jeopardy to resident health or safety, or
→ a pattern of or widespread actual harm that is not Immediate Jeopardy, or
→ a widespread potential for more than Minimal Harm that is not Immediate Jeopardy, with no Actual Harm.

■ Substantial Compliance

DETERMINING THE SERIOUSNESS OF DEFICIENCIES Scope and Severity

	Immediate Jeopardy	(J) POC Required	(K) POC Required	(L) POC Required
S E V E R I T Y	Actual Harm, but no Immediate Jeopardy	(G) POC Required	(H) POC Required	(I) POC Required
	No actual Harm, Potential for more than Minimal Harm, No Immediate Jeopardy	(D) POC Required	(E) POC Required	(F) POC Required
	No Actual Harm, potential for no more than Minimal Harm	(A) No Remedies	(B) POC Required	(C) POC Required
	SCOPE:	Isolated	Pattern	Widespread

Isolated: One or a very limited number of residents affected, one or a very limited number of staff involved; occurrences only occasionally or in very limited locations.

Pattern: More than a very limited number of residents affected or staff involved; repeat occurrences for some residents; occurrences at several locations.

Widespread: Problems or deficiencies that are pervasive throughout the facility or represent a systemic failure or affecting a large portion of the facility's population.

Severity:

Immediate Jeopardy to resident health or safety. This level means a situation in which immediate corrective action is necessary because the nursing facility's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, serious harm, impairment, or death to a resident receiving care in the facility.

Actual Harm that is not Immediate Jeopardy. This level means noncompliance that results in a negative outcome that has compromised the resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.

No Actual Harm with a potential for more than minimal harm, but not Immediate Jeopardy. This level means noncompliance that results in minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise the resident's ability to maintain or reach his or her highest practicable physical, mental, or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.

No Actual Harm with a potential for minimal harm. This level means that a deficiency has the potential for causing no more than a minor negative impact on the resident.

PLAN OF CORRECTION REQUIREMENTS

RESIDENT CENTERED DEFICIENCIES

- INDEPTH ANALYSIS HOW DEFICIENCY OCCURRED.
- HOW FACILITY IDENTIFIED RESIDENT AFFECTED AND RESIDENTS HAVING POTENTIAL TO BE AFFECTED BY SAME DEFICIENT PRACTICE.
- CORRECTIVE ACTION TAKEN FOR RESIDENT AFFECTED.
- MEASURES OR SYSTEMIC CHANGES MADE TO ENSURE THAT DEFICIENT PRACTICE WILL NOT OCCUR.
- HOW FACILITY WILL MONITOR ITS CORRECTIVE ACTIONS TO ENSURE DEFICIENT PRACTICE IS CORRECTED AND WILL NOT RECUR.

Progressive Enforcement Federal System

Triggers

- "No opportunity to correct"
 - Harm, SQuC, Immediate Jeopardy
- Outlier status
- Repeat Citations
 - Same tag
 - Same regulatory group
- Failure to sustain compliance
 - Cycle to cycle
 - Previous two (2) standard surveys

Remedies

- Education/Remediation
 - DPOC, DIT, Clinical or Administrative Advisor
- Civil Money Penalty
- BOA, DPNA, DPAI
 - Temporary manager
- Termination

State Enforcement Remedies

- Correction Notice Orders:
 - 1) Ban on Admissions
 - 2) Reduced License Capacity
 - 3) Selective Transfer of Residents
 - 4) Receivership
 - 5) Administrative Advisor
 - 6) Clinical Advisor
 - 7) Temporary Manager

State Enforcement Remedies

- State Civil Penalty Orders
- License Revocation
 - 1) Emergency Order
 - 2) Non-Emergency Revocation

Federal Remedies

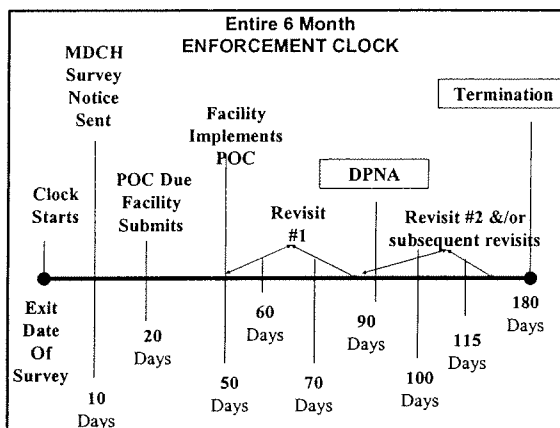
- Directed Plan of Correction
- State Monitor; and/or
- Directed In-Service Training
- Transfer of Residents
- Denial of Payments for New Admissions
 - 1) At 90 days
 - 2) Discretionary
- Civil Money Penalties
 - 1) \$50 - \$3,000/day – Non-IJ
 - 2) \$3,050 - \$10,000/day – IJ
 - 3) \$1,000 - \$10,000/per instance

Federal Remedies

- Denial Of Payments All Admissions
- Temporary Management
- Termination
 - 1) 180 Day
 - 2) Discretionary

Enforcement

- An enforcement cycle begins with: A survey
- 1. Standard – a periodic, resident-centered inspection that gathers information about the quality of service furnished in a facility to determine compliance with the requirements of participation.
- 2. Abbreviated Standard – may be conducted due to a complaint received.
- 3. Extended – evaluates additional participation requirements subsequent to finding SQOC during a standard survey. The standard survey was expanded – a standard that has been increased (or extended) when surveyors expect substandard quality of care
- 5. Partial Extended – finds SQOC at an abbreviated survey
- 6. Immediate Jeopardy – caused or is likely to cause serious injury, harm, impairment or death to a resident.



Facility History

Facility logs are used to record all survey events at a facility.

Facility history is recorded by DCH/BHS Enforcement Unit staff.

Facility logs are available to State Managers to help in determining enforcement remedies and available to the public via FOIA.

Sunshine Facility

# of RV	Event/Activity	Date Occurred	Clock Start	Clock Stop	Remedies	Comments	By
	Standard Survey	07-30-03	X		Opportunity to Correct	HS Level E, F371, F324, F314 Level D, F156 Level B, F458 07-01-03 LSC Level E	CM
1	1 st Revisit to Standard Survey	09-24-03			Recommend: Impose mandatory dpna effective 10-30-03	Level D, F324 (only cite)	CM

FACILITY LOG							
Facility Name		City/County		Survey Date		Surveyor	
# of RV	Event/Activity	Date Occurred	Clock Start	Clock Stop	Remedies	Comments	By
	Standard Survey	07-30-03	X		Opportunity to Correct	HS Level E, F371, F324, F314 Level D, F156 Level B, F458 07-01-03 LSC Level E	CM
1	1 st Revisit to Standard Survey	09-24-03			Recommend: Impose mandatory dpna effective 10-30-03	Level D, F324 (only cite)	CM

FACILITY LOG									
Facility	Address	City	State	Zip	Phone	Facility	Facility	Facility	Facility
1. 1st Street	1st Street	1st Street	1st Street	1st Street	1st Street	1st Street	1st Street	1st Street	1st Street
2. 2nd Street	2nd Street	2nd Street	2nd Street	2nd Street	2nd Street	2nd Street	2nd Street	2nd Street	2nd Street
3. 3rd Street	3rd Street	3rd Street	3rd Street	3rd Street	3rd Street	3rd Street	3rd Street	3rd Street	3rd Street
4. 4th Street	4th Street	4th Street	4th Street	4th Street	4th Street	4th Street	4th Street	4th Street	4th Street
5. 5th Street	5th Street	5th Street	5th Street	5th Street	5th Street	5th Street	5th Street	5th Street	5th Street
6. 6th Street	6th Street	6th Street	6th Street	6th Street	6th Street	6th Street	6th Street	6th Street	6th Street
7. 7th Street	7th Street	7th Street	7th Street	7th Street	7th Street	7th Street	7th Street	7th Street	7th Street
8. 8th Street	8th Street	8th Street	8th Street	8th Street	8th Street	8th Street	8th Street	8th Street	8th Street
9. 9th Street	9th Street	9th Street	9th Street	9th Street	9th Street	9th Street	9th Street	9th Street	9th Street
10. 10th Street	10th Street	10th Street	10th Street	10th Street	10th Street	10th Street	10th Street	10th Street	10th Street